

AMENDED IN SENATE JULY 12, 2004

AMENDED IN SENATE JUNE 14, 2004

AMENDED IN ASSEMBLY MAY 3, 2004

AMENDED IN ASSEMBLY APRIL 1, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2042**

**Introduced by Assembly Member Lowenthal**

February 17, 2004

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An act to add Sections 40459.1, 40459.2, and 40459.3 to the Health and Safety Code, relating to ports.

LEGISLATIVE COUNSEL'S DIGEST

AB 2042, as amended, Lowenthal. Ports: Port of Los Angeles: Port of Long Beach: air pollution.

(1) Existing law provides for the regulation of ports and harbors. Existing law, the Lewis-Presley Air Quality Management Act, establishes the South Coast Air Quality Management District (south coast district) as the sole and exclusive local agency within those portions of the Counties of Los Angeles, Orange, Riverside, and San Bernardino that are included within the South Coast Air Basin.

This bill would require the south coast district, on or before September 1, 2005, to establish a baseline for air quality for the Port of Los Angeles and the Port of Long Beach. The air quality baseline would be based on data collected by the district regarding the level of emissions in those ports during 2004 from oceangoing vessels and harbor craft, cargo handling equipment, rail locomotives, and

commercial motor vehicles, as defined. The air quality baseline would also be based on data collected by the district regarding the emissions levels in those ports during 2004 from oxides of nitrogen, carbon monoxide, particulate matter, and sulfur dioxide.

The bill would require the south coast district, the State Air Resources Board (state board), the Port of Los Angeles, and the Port of Long Beach, ~~in consultation with the federal Environmental Protection Agency, industry stakeholders, community and homeowner groups near the ports of Los Angeles and Long Beach, and environmental organizations,~~ to develop *and enter into* a Memorandum of Agreement (MOA) to implement emission control measures related to operations at each of those ports.

The bill would require the MOA to include certain provisions, including (a) a requirement that, on or before January 1, 2006, and on or before January 1 of each year thereafter, the level of air pollution at the Port of Los Angeles and the Port of Long Beach not exceed the specified baseline; (b) a requirement that the Port of Long Beach and the Port of Los Angeles reimburse the board for all costs incurred as a result of developing the MOA; and (c) a requirement that the Port of Los Angeles and the Port of Long Beach waive any claim to reimbursement by the state for costs incurred as a result of developing and implementing the MOA.

*The bill would require the south coast district, the state board, the Port of Los Angeles, and the Port of Long Beach, in developing the MOA, to consult with the federal Environmental Protection Agency, industry stakeholders, community and homeowner groups near the Port of Los Angeles and the Port of Long Beach, and environmental organizations.*

The bill would require the state board to report to the Legislature on January 1, 2006, and on January 1 of each year thereafter regarding the development and implementation of the MOA.

The bill would require the ports of Los Angeles and Long Beach, if the MOA has not been entered into by all of the necessary parties on or before September 1, 2005, to develop a baseline for air quality for each port, based on data collected by the port regarding the level of emissions in the port during 2004 from certain sources and regarding the level of emissions in each port during 2004 from certain air pollutants. The bill would require the ports to submit the baselines to the south coast district for approval. The bill would require the ports, on or before January 1, 2006, and on or before January 1 of each year thereafter, to ~~limit their~~



~~growth and operations at the~~ operate in a manner that prevents the level of air pollution at each port from exceeding the specified baseline. The bill would require the ports, on March 1, 2006, and on March 1 of each year thereafter, to report to the district regarding ~~the port's~~ *their respective* compliance with the limitation requirement relating to port ~~growth and operations~~ operation, including an accounting of the port's programs and efforts that are directed towards that compliance. ~~The bill would authorize the ports to establish an emission reduction credit trading program or an emission offset program for specified pollution sources, if the program is approved by either the district or the board.~~ To the extent that these requirements would impose additional duties upon the ports and the south coast district, the bill would establish a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) Exhaust fumes from diesel fuel are known to cause cancer.
- 4 (b) A landmark study conducted by the South Coast Air
- 5 Quality Management District, the "Multiple Air Toxics Exposure
- 6 Study," found that 70 percent of all serious health risks
- 7 attributable to mobile pollution sources are attributable to diesel
- 8 engine exhaust.
- 9 (c) The federal Clean Air Act (42 U.S.C. Sec. 7401, et seq.)
- 10 requires certain regions that have high levels of air pollution

1 demonstrate that construction of new highways will not worsen air  
2 pollution.

3 SEC. 2. Section 40459.1 is added to the Health and Safety  
4 Code, to read:

5 40459.1. (a) (1) On or before September 1, 2005, the south  
6 coast district shall establish a baseline for air quality for the Port  
7 of Los Angeles and the Port of Long Beach.

8 (2) The air quality baseline shall be based on data collected by  
9 the south coast district regarding the level of emissions in those  
10 ports during 2004 from the following sources:

11 (A) Oceangoing vessels and harbor craft.

12 (B) Cargo handling equipment.

13 (C) Rail locomotives.

14 (D) Commercial motor vehicles, as defined in subdivision (b)  
15 of Section 15210 of the Vehicle Code.

16 (3) The air quality baseline shall be based on data collected by  
17 the south coast district regarding the emissions levels in those ports  
18 during 2004 from the following air pollutants:

19 (A) Oxides of nitrogen (NO<sub>x</sub>).

20 (B) Carbon monoxide(CO).

21 (C) PM2.5 and PM10, as defined in Section 39614.

22 (D) Particulate matter from diesel fuel.

23 (E) Sulfur dioxide (SO<sub>2</sub>).

24 (b) On or before September 1, 2005, the south coast district, the  
25 state board, the Port of Los Angeles, and the Port of Long Beach,  
26 ~~in consultation with the federal Environmental Protection Agency,~~  
27 ~~industry stakeholders, community and homeowner groups near~~  
28 ~~the ports of Los Angeles and Long Beach, and environmental~~  
29 ~~organizations, shall develop~~ *shall develop and enter into* a  
30 Memorandum of Agreement (MOA) to implement emission  
31 control measures related to operations at each of those ports.

32 (c) The MOA shall include all of the following provisions:

33 (1) A requirement that, on or before January 1, 2006, and on or  
34 before January 1 of each year thereafter, the level of air pollution  
35 at the Port of Los Angeles and the Port of Long Beach not exceed  
36 the baseline established under subdivision (a).

37 (2) Enforcement provisions that are within the jurisdiction of  
38 the implementing agencies.

39 (3) A process for public input and comment on any proposal  
40 prior to final agreement.

1 (4) A requirement that the Port of Long Beach and the Port of  
2 Los Angeles reimburse the state board for all costs incurred as a  
3 result of developing the MOA.

4 (5) A requirement that the Port of Los Angeles and the Port of  
5 Long Beach waive any claim to reimbursement by the state for  
6 costs incurred as a result of developing and implementing the  
7 MOA.

8 (d) *In developing the MOA, the south coast district, the state*  
9 *board, the Port of Los Angeles, and the Port of Long Beach shall*  
10 *consult with the federal Environmental Protection Agency,*  
11 *industry stakeholders, community and homeowner groups near the*  
12 *Port of Los Angeles and the Port of Long Beach, and*  
13 *environmental organizations.*

14 (e) *Nothing in the MOA shall affect efforts to regulate port*  
15 *emissions.*

16 (f) The state board shall report to the Legislature on January 1,  
17 2006, and on January 1 of each year thereafter, regarding the  
18 development and implementation of the MOA.

19 SEC. 3. Section 40459.2 is added to the Health and Safety  
20 Code, to read:

21 40459.2. If the Memorandum of Agreement required under  
22 Section 40459.1 has not been entered into by all of the necessary  
23 parties on or before September 1, 2005, all of the following shall  
24 apply on that date:

25 (a) (1) The Port of Los Angeles shall develop a baseline for air  
26 quality for the port.

27 (2) The air quality baseline shall be based on data collected by  
28 the port regarding the level of emissions in the port during 2004  
29 from the following sources:

30 (A) Oceangoing vessels and harbor craft.

31 (B) Cargo handling equipment.

32 (C) Rail locomotives.

33 (D) Commercial motor vehicles, as defined in subdivision (b)  
34 of Section 15210 of the Vehicle Code.

35 (3) The air quality baseline shall be based on data collected by  
36 the port regarding the level of emissions in the port during 2004  
37 from the following air pollutants:

38 (A) Oxides of nitrogen (NO<sub>x</sub>).

39 (B) Carbon monoxide (CO).

40 (C) PM<sub>2.5</sub> and PM<sub>10</sub>, as defined in Section 39614.

1 (D) Particulate matter from diesel fuel.

2 (E) Sulfur dioxide (SO<sub>2</sub>).

3 (4) The Port of Los Angeles shall submit the baseline  
4 developed by it to the south coast district for approval.

5 (b) On or before January 1, 2006, and on or before January 1  
6 of each year thereafter, the Port of Los Angeles shall ~~limit growth~~  
7 ~~and operations at~~ *operate* the port in a manner that prevents the  
8 level of air pollution at the port from exceeding the baseline  
9 developed and approved under subdivision (a).

10 (c) On March 1, 2006, and on March 1 of each year thereafter,  
11 the Port of Los Angeles shall report to the south coast district  
12 regarding the port's compliance with subdivision (b), including,  
13 but not limited to, an accounting of the port's programs and efforts  
14 that are directed towards that compliance.

15 ~~(d) The Port of Los Angeles may establish an emission~~  
16 ~~reduction credit trading program or an emission offset program for~~  
17 ~~the sources described in paragraph (2) of subdivision (a), if the~~  
18 ~~program is approved by either the south coast district or the state~~  
19 ~~board.~~

20 ~~(e)~~

21 (d) This section is intended to grant only oversight authority to  
22 the south coast district with respect to the baseline developed by  
23 the Port of Los Angeles under subdivision (a).

24 (e) *Nothing in this section prevents the state board or the south*  
25 *coast district from adopting and implementing regulations for any*  
26 *source at any port in this state.*

27 SEC. 4. Section 40459.3 is added to the Health and Safety  
28 Code, to read:

29 40459.3. If the Memorandum of Agreement required under  
30 Section 40459.1 has not been entered into by all of the necessary  
31 parties on or before September 1, 2005, all of the following shall  
32 apply on that date:

33 (a) (1) The Port of Long Beach shall develop a baseline for air  
34 quality for the port.

35 (2) The air quality baseline shall be based on data collected by  
36 the port regarding the level of emissions in the port during 2004  
37 from the following sources:

38 (A) Oceangoing vessels and harbor craft.

39 (B) Cargo handling equipment.

40 (C) Rail locomotives.

(D) Commercial motor vehicles, as defined in subdivision (b) of Section 15210 of the Vehicle Code.

(3) The air quality baseline shall be based on data collected by the port regarding the level of emissions in the port during 2004 from the following air pollutants:

(A) Oxides of nitrogen (NO<sub>x</sub>).

(B) Carbon monoxide (CO).

(C) PM2.5 and PM10, as defined in Section 39614.

(D) Particulate matter from diesel fuel.

(E) Sulfur dioxide (SO<sub>2</sub>).

(4) The Port of Long Beach shall submit the baseline to the south coast district for approval.

(b) On or before January 1, 2006, and on or before January 1 of each year thereafter, the Port of Long Beach shall ~~limit growth and operations at~~ *operate* the port in a manner that prevents the level of air pollution at the port from exceeding the baseline developed and approved under subdivision (a).

(c) On March 1, 2006, and on March 1 of each year thereafter, the Port of Long Beach shall report to the south coast district regarding the port's compliance with subdivision (b), including, but not limited to, an accounting of the port's programs and efforts that are directed towards that compliance.

~~(d) The Port of Long Beach may establish an emission reduction credit trading program or an emission offset program for the sources described in paragraph (2) of subdivision (a), if the program is approved by either the south coast district or the state board.~~

~~(e)~~

(d) This section is intended to grant only oversight authority to the south coast district with respect to the baseline developed by the Port of Long Beach under subdivision (a).

*(e) Nothing in this section prevents the state board or the south coast district from adopting and implementing regulations for any source at any port in this state.*

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for

- 1 reimbursement does not exceed one million dollars (\$1,000,000),
- 2 reimbursement shall be made from the State Mandates Claims
- 3 Fund.

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